

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES SHIVE,

Plaintiff,

v.

No. CIV 15-0406 JB/WPL

AMAZON.COM INC.; EBAY, INC.;
JOHN LAVECCHIA; J&C BASEBALL
CLUBHOUSE, INC.; SEARS HOLDING
CORPORATION; UNBEATABLE
SALE.COM INC.; and WAL-MART
STORES, INC.,

Defendants.

**MEMORANDUM OPINION AND ORDER
DENYING MOTION FOR DEFAULT JUDGMENT**

THIS MATTER comes before the Court on the Plaintiff's Motion for Default Judgment Against Defendant J&C Baseball Clubhouse, Inc., filed August 5, 2016 (Doc. 59) ("Motion for Default Judgment"). The case's procedural history makes entry of default judgment against Defendant J&C Baseball Clubhouse inappropriate. J&C Baseball Clubhouse was dismissed without prejudice on October 29, 2015, because Plaintiff James Shive failed to effect service upon J&C Baseball Clubhouse within the allotted time period and extensions. See Order Dismissing Defendants J&C Baseball Clubhouse, Inc., John LaVecchia, and eBay, Inc., without Prejudice at 1, filed October 29, 2015 (Doc. 30). Shive subsequently presented sufficient evidence that he had effected service upon J&C Baseball Clubhouse. See Motion to Reinstate Defendant at 1, filed February 1, 2016 (Doc. 51). J&C Baseball Clubhouse was then reinstated as a party-defendant. See Order Granting Motion to Reinstate Defendant at 1, filed May 19, 2016 (Doc. 58) ("Order Reinstating J&C").

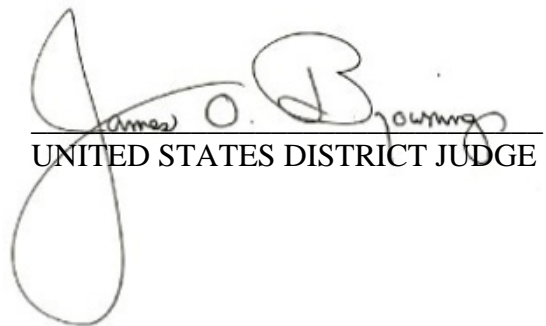
It is unclear whether J&C Baseball Clubhouse was ever served with notice that it had been reinstated as a party-defendant and needed to defend this case. Indeed, the Honorable William P. Lynch, United States Magistrate Judge for the District of New Mexico, entered an Order on August 23, 2016, directing Shive to serve the Complaint, the Order reinstating J&C, and the Order Directing Additional Service on J&C Baseball Clubhouse no later than September 30, 2016, and to provide proof of such service no later than October 3, 2016. See Order Directing Additional Service at 1, filed August 23, 2016 (Doc. 61).

In response, Shive filed a document entitled “Proof of Service” showing that the complaint was served on October 26, 2015; the Motion to Reinstate, see Motion to Reinstate Defendant at 1, Motion for Default Judgment, see Motion for Default Judgment at 1; and the Clerk of the Court’s Entry of Default, see Clerk’s Entry of Default at 1, filed August 8, 2016 (Doc. 60), were personally served on Steven Rotundo, on August 31, 2016; and the Order Directing Additional Service, see Order Directing Additional Service at 1, was sent by certified mail on September 27, 2016. See Proof of Service Concerning J&C Baseball Clubhouse at 1, filed September 28, 2016 (Doc. 62.) There are several problems with this Proof of Service. First, Shive was ordered to serve the original Complaint on J&C Baseball Clubhouse a second time, which he did not do. Second, it is unclear who Steven Rotundo is in relation to J&C Baseball Clubhouse, and whether he is indeed an acceptable person to accept service of process on behalf of J&C Baseball Clubhouse. Finally, while service by certified mail is an acceptable form of service, see Fed. R. Civ. P. 4(h)(1)(A); N.J.R.R. 4:4-3, Shive did not file a return of service, and the United States Postal Service printout shows only that the mail was delivered and “[l]eft with individual.” See Proof of Service Concerning J&C Baseball Clubhouse at 1, filed October 3, 2016 (Doc. 63.)

Under the circumstances, it is unclear that J&C Baseball Clubhouse has been appropriately served with notice that it was reinstated as a party-defendant in this action. Defendant James Shive's Motion for Default Judgment is premature, and the Court therefore denies it without prejudice.

This matter is returned to the Honorable Judge Lynch for any appropriate proceedings arising out of the August 23, 2016, Order directing Shive to serve J&C Baseball Clubhouse.

IT IS ORDERED that the Plaintiff's Motion for Default Judgment Against Defendant J&C Baseball Clubhouse, Inc., filed August 5, 2016 (Doc. 59), is denied without prejudice.



UNITED STATES DISTRICT JUDGE

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